

AG Contract No.: KR03-0609TRN  
ADOT ECS File No.: JPA 03-024  
Project: RAM 202-B-509  
Section: Red Mountain Freeway (SR 202L)  
Center Street to Gilbert Road  
TRACS No.: H641201C  
BUDGET SOURCE TEM # 32303  
MCDOT Contract No.:

**C.64.04.032.2.01**  
**INTERGOVERNMENTAL AGREEMENT**

BETWEEN  
THE STATE OF ARIZONA  
AND  
MARICOPA COUNTY, ARIZONA

THIS AGREEMENT is entered into 3rd June, 2004 pursuant to Arizona Revised Statutes Sections 11-951 through 11-954, as amended between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and MARICOPA COUNTY DEPARTMENT OF TRANSPORTATION, acting by and through its CHAIRMAN and BOARD OF SUPERVISORS (the "County").

**I. RECITALS**

1. The State is empowered by Arizona Revised Statutes Section 28-401 to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.

2. The County is empowered by Arizona Revised Statutes Section 11-251, 11-951 and 28-6701 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the County.

3. It is to the mutual advantage of the State and the County to construct a screen wall south of McDowell Road along the Red Mountain Freeway (SR 202L), from Center Street to Gilbert Road. The parties agree the State will be the lead agency for the construction of the screen wall, with a total contribution of \$400,000.00 and the County will contribute the remainder of the costs, estimated at \$1,779,564.00, hereinafter referred to as the "Project". The State, upon completion of design and approval of the State Transportation Board, will proceed with bidding, constructing and administering the Project.

THEREFORE, in consideration of the mutual agreements expressed herein, it is agreed as follows:

NO. 26864  
Filed with the Secretary of State  
Date Filed: 06/03/04

Janice K. Brewer  
Secretary of State

By: Dan V. Haenewald

## **II. SCOPE OF WORK**

### **1. The State will:**

a. Upon execution of this agreement, invoice the County \$1,779,564.00 for the estimated amount of the County's contribution to the Project (TRACS No. H641201C), as shown in Exhibit A, attached hereto and made a part hereof.

b. Prepare design plans, specifications and other such documents and services required for the construction bidding and construction of the Project. Incorporate or resolve the County's review comments with 10 business days of receipt of comments.

c. Coordinate with the County during the design plans stage, and upon completion of the State's design, call for bids and award one or more construction contracts for the Project, administer same and make all payments to the contractors. Confer with the County on any Project related contract modifications. Be responsible for any claims for extra compensation due to delays or whatever reason, attributable to the State.

d. Upon completion, provide the County with a recapitulation of the Project's costs, to include, but not limited to: design, construction and post design costs, which includes a fixed rate of 14% for construction engineering and administration costs.

e. Upon completion and final reconciliation of the Project costs, invoice or reimburse for the difference between the amount paid by the County and the actual costs for the Project, including, but not limited to: design, construction, construction change orders, and construction engineering and administration costs (not to exceed 14% of the project construction cost) utilizing a detailed accounting provided by the Resident Engineer and the Project Manager.

f. Upon completion of the Project by the State and concurrence by the County, accept the Project on behalf of the parties hereto and provide maintenance inside the State's control of access.

### **2. The County will:**

a. Upon execution of this agreement and within 30 days of receipt of an invoice from the State, remit \$1,779,564.00, for the County's estimated contribution to the Project (TRACS No. H6412 01C), as shown in Exhibit A. The County's share will be based upon the actual costs for design, construction, construction change orders, and construction engineering and administration costs, minus the State's total contribution of \$400,000.00 for the Project.

b. Review the design plans, specifications and other such documents and will provide comments to the State within 10 days of receipt. Not make any changes, additions or deletions to the screen wall without prior written approval of the State.

c. Reimburse the State within 30 days after receipt of invoice, for the actual costs associated with the Project, in the event the actual cost of the Project exceeds the amount paid by the County, including, but not limited to: design; construction; construction change orders; and construction engineering and administration costs (not to exceed 14% of the project construction cost) utilizing a detailed accounting provided by the Resident Engineer and the Project Manager.

d. Be responsible for any claims for extra compensation due to delays or whatever reason, attributable to the County.

e. Should the County withdraw its proposed plans for whatever reason, the County will be responsible for all costs incurred by the State up to the time of withdrawal, unless the reason for the County's cancellation is due to the State's failure to comply with its obligations herein.

### **III. MISCELLANEOUS PROVISIONS**

1. This agreement shall remain in force and effect until completion of the Project and said payments or reimbursements; provided, however, that this agreement, except any provisions herein for maintenance, which shall be perpetual, may be cancelled at any time prior to the advertisement of a Project construction contract, upon 30 days written notice to the other party.

2. Each party (as "indemnitor") agrees to indemnify, defend, and hold harmless the other party (as "indemnitee") from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees), hereinafter collectively referred to as "claims", arising out of bodily injury of any person (including death) or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents employees, or volunteers.

3. This agreement shall become effective upon filing with the Secretary of State.

4. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

5. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

6. This agreement is subject to all applicable provisions of the Americans with Disabilities Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable federal regulations under the Act, including 28 CFR Parts 35 and 36. The provisions of A.R.S. § 41-1463 and Executive Order Number 99-4 issued by the Governor of the State of Arizona are incorporated by this reference as a part of this Intergovernmental Agreement.

7. Non-Availability of Funds: Every payment obligation of the State and the County under this contract is conditioned upon the availability of funds appropriated or allocated for the payment of such obligation. If funds are not allocated and available for the continuance of this contract, this contract may be terminated by the State or the County at the end of the period for which the funds are available. No liability shall accrue to the State or the County in the event this provision is exercised, and the State or the County shall not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

8. In the event of any controversy which may arise out of this agreement, the parties hereby agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

9. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 South 17th Avenue, Mail Drop 616E  
Phoenix, AZ. 85007  
FAX (602) 712-7424

Maricopa County  
Department of Transportation  
2901 W. Durango Street  
Phoenix, Arizona 85009-6357

10. Pursuant to Arizona Revised Statutes, Section 11-952 (D), attached hereto is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

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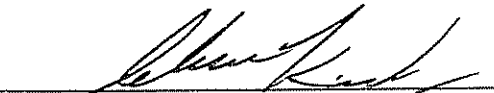
IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.

COUNTY OF MARICOPA

STATE OF ARIZONA

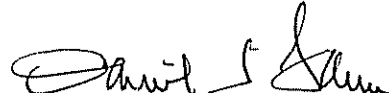
Department of Transportation

By



ANDREW KUNASEK  
Chairman of the Board

By



DANIEL S. LANCE, P.E.  
Deputy State Engineer

Date

5/19/04

Date

5/24/04

ATTEST

By



FRAN MCCARROLL  
Clerk of the Board

Date

5/19/04

## **EXHIBIT A**

**JPA 03-024**

### **DESCRIPTION OF SCREEN WALL**

Maricopa County and the Arizona Department of Transportation have agreed to the construction of an 8' high screen wall on the south side of the Red Mountain Freeway North Channel O&M road from Mesa Drive to Gilbert Road. The wall shall consist of masonry block units. Length of the screen wall shall be 10504 feet, plus or minus.

### **COST SUMMARY OF SCREEN WALL**

Item	Design fee	Construction (Final Cost)	Construction Engineering and Contingencies (not to exceed 14%)	Total Cost	ADOT Component	Maricopa County Component
Screen Wall	\$73,978	\$1,847,005	\$258,581	\$2,179,564	\$400,000	\$1,779,564

Agenda Activity: Action  
 Department: Transportation  
 Category: Chief Regional Dvlpmnt Svcs  
 Contact: Abedon Fimbres  
 Return to: Abedon Fimbres  
 Location: DEPT OF TRANSPORTATION ADMIN BLDG

Agenda Number: C-64-04-032-2-01  
 Phone: 602 506-1049 Continued from: 05/05/2004  
 Phone: 602 506-1049

## Action Requested:

Approve the Amendment to the IGA between Maricopa County and the State of Arizona, acting through the Arizona Department of Transportation (ADOT), and the Maricopa County Department of Transportation. The Amendment provides for cost sharing for the construction of a screen wall south of McDowell Road, extending from Center Street to Gilbert Road. ADOT will act as the lead agency on the \$2,179,564.00 project and the County will cost share. This Amendment replaces the original IGA that was signed by the Board of Supervisors on 11/9/03, but was never executed by ADOT as the Arizona Attorney General's Office wanted to add some clarifying language

## Complete description of action requested:

The Amendment outlines that MCDOT and ADOT have agreed on the dispersion of responsibilities for the construction of a screen wall south of McDowell Road, extending from Center Street to Gilbert Road. ADOT will act as the lead agency for the design, construction, and construction management and the wall has been constructed. ADOT will also maintain the wall upon completion of construction. The County will act as a financial partner. The total project cost is \$2,179,564.00. The County's cost share is estimated at \$1,779,564. County funds are currently budgeted in Fiscal Year 2004 under project number 68957, T 081, Gilbert Road: McDowell Road to State Route 87. The wall was also referred to in item of a previous agenda number C-64-030135-2-00, and agreement with the Salt River Pima Maricopa Indian Community, which required the construction of the wall in order for the Indian Community to accept the McDowell Road right-of-way from the County.

This Amendment will replace the IGA signed by the Board of Supervisors on 11/09/03 and was never executed by ADOT as the Arizona Attorney General's Office wanted to add clarifying language to the IGA.

Supervisory District #2

## PERFORMANCE INFORMATION:

Program: Support Transportation Systems

Activity: Project Partnerships

Performance Measure: % of MCDOT projects partnership agreements completed

Anticipated Results: Agreement will allow for the construction of the screen wall.

## Expenditure Impact by FY(s):

Funds have been provided in the Departments CIP Budget for the FYE 06/30/04, under the project T-081, in the amount of \$1,779,564.

Routing: Meeting Date: 05/19/2004		
Legend X=Pending A=Approved R=Rejected		
CNTY_ENGR	LEGAL	OMB
A	A	A

*Frank McCaswell*

"Please return an executed original to the Clerk of the Board of Supervisors."

APPROVAL OF THE COUNTY OF MARICOPA ATTORNEY

I have reviewed the above referenced intergovernmental agreement between the DEPARTMENT OF TRANSPORTATION, INTERMODAL TRANSPORTATION DIVISION, and the MARICOPA COUNTY, an agreement among public agencies which, has been reviewed pursuant to A.R.S. section 11-951 through 11-954 and declare this agreement to be in proper form and within the powers and authority granted to the County under the laws of the State of Arizona. No opinion is expressed as to the authority of the State to enter into this agreement.

DATED this 12<sup>th</sup> day of April, 2004.

Michelle D'Andrea

County Attorney



OFFICE OF THE ATTORNEY GENERAL  
STATE OF ARIZONA

TERRY GODDARD  
ATTORNEY GENERAL

CIVIL DIVISION  
TRANSPORTATION SECTION  
WRITER'S DIRECT LINE 602.542.8855


**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR03-0609TRN (**JPA 03-024**; IGA #C.64.04.032.2.01), an Agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the Undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining Parties, other than the State or its agencies, to enter into said Agreement.

DATED: June 1, 2004

TERRY GODDARD  
Attorney General

  
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JEFFREY T. MURRAY  
Assistant Attorney General  
Transportation Section